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August 28, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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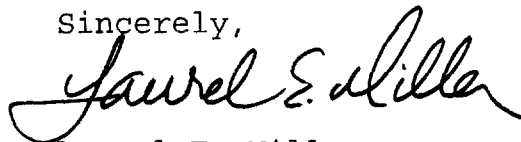
Re: Comments in MM Docket No. 95-90

Dear Mr. Caton:

Enclosed are the original and five copies of the
Comments of the CBS Television Network Affiliates Association
and the ABC Television Network Affiliates Association in MM
Docket No. 95-90.

Please stamp and return one copy for our files.

Sincerely,



Laurel E. Miller
Attorney for
CBS Television Network
Affiliates Association and
ABC Television Network
Affiliates Association

LEM:pkh

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Review of the Commission's)
Regulations Governing Broadcast)
Television Advertising)

MM Docket No. 95-90

DOCKET FILE COPY ORIGINAL

To: The Commission

**COMMENTS OF THE CBS TELEVISION NETWORK AFFILIATES ASSOCIATION
AND THE ABC TELEVISION NETWORK AFFILIATES ASSOCIATION**

The CBS Television Network Affiliates Association and the ABC Television Network Affiliates Association, representing more than 400 television broadcast stations affiliated with the CBS and ABC networks across the United States, submit the following comments in response to the Commission's Notice of Proposed Rulemaking in this matter ("Notice").

SUMMARY

Repeal of the "network control of station advertising rates" rule and the "network advertising representation" rule ("the rules") addressed in the Commission's Notice would likely result in severe economic damage to affiliates because it would jeopardize their competitive position in the market for advertising time. Moreover, by enabling networks to push independent representatives out of business, repeal would deprive affiliates of the objective programming and other advice those representatives offer. Ultimately, such a rule change would result in even greater network control over programming

decisions. Networks will be able to achieve these results because of the tremendous leverage they have over affiliates. Recent regulatory changes have increased that leverage, and repeal of these rules would enhance it even further at the expense of the viewing public.

Repeal of the rules would give networks a major advantage in the longstanding tug-of-war between networks and affiliates over the time available for advertising sales. This is ironic, given that affiliates are the supposed beneficiaries of the lower transaction costs that opponents of the rules theorize will result from their repeal. The CBS and ABC Affiliates believe that, rather than receiving any benefits, affiliates will only suffer from repeal of the rules.

I. REPEAL OF THE RULES WOULD DAMAGE AFFILIATES ECONOMICALLY AND IN TERMS OF PROGRAMMING INDEPENDENCE.

Affiliates compete directly with networks in the sale of advertising time. Through the sale of national spots that air during or adjacent to network programs, affiliates are able to offer national and regional advertisers an attractive advertising vehicle that is comparable to network advertising in terms of both cost and viewer reach but that is more flexible and permits greater geographic targeting. The ability of affiliates to compete in this manner is vital to their economic viability. A typical affiliate obtains about half of its revenue from sales of national spot advertising.

The rules addressed in the Notice established and continue to maintain the environment that makes this competition possible. By preventing networks from controlling station advertising rates and from representing affiliates for sales of national spot advertising, the rules have ensured that networks and affiliates would continue to have competing interests in the advertising marketplace. The network representation rule, in particular, gives affiliates an independent voice in this competitive environment because it assures that affiliates can take advantage of the economies of scale created by independent advertising representatives -- representatives that are loyal only to the affiliates. Without the network representation rule, networks would be able to drive independent representatives out of business and replace them with network-owned representatives. Networks would thus be able to gain control over the sale of both network advertising and national spot advertising, which compete for the same pool of advertising revenue. Networks then would be in a position to decrease the availability of national spots. The net result for affiliates would be less revenue, diminished economic well-being, and a weakened system of broadcasting.

In addition to harm to the economic vitality of affiliates, repeal of the rules would likely result in reduced programming independence. Presently, independent sales representatives serve an essential role as objective advisers

to local stations with respect to programming and scheduling decisions. This advice, upon which many affiliates rely, is aimed only at furthering the interests of the affiliates and their communities. Because repeal of the network representation rule in particular would enable networks to drive out independent representatives, affiliates would lose this independent advice on programming, syndication and network preemption. In that environment, it is hard to imagine a network-owned representative firm actively soliciting, for example, a Billy Graham Crusade or a local high school football game. Instead, the counselling they receive from network-owned representatives would inevitably be influenced by the network's own interests, which ultimately lie in maximizing exhibition of network programming and network advertising.

II. REPEAL OF THE RULES WOULD FURTHER ENHANCE NETWORK LEVERAGE OVER AFFILIATES.

Networks will be able to achieve the harmful results described above -- control over both network and national spot advertising, and elimination of the independent representatives -- because of the tremendous leverage they have over affiliates. The influence of networks vis-a-vis affiliates is becoming increasingly pervasive due to regulatory and other changes; repeal of the rules considered in the Notice will further enhance that influence.

Repeal of the rules will force many affiliates to switch to network-owned sales representatives. The networks

will be positioned to pressure affiliates to switch because the affiliates are dependent on a network affiliation for much of the value of their station. Moreover, important regulatory changes guarantee that networks will exert continuing leverage over affiliates. These changes include the networks' new capacity to have a financial interest in programming and to syndicate their shows (a rule change with which we agree), the repeal of the prime time access rule (a rule change with which we agreed in the main), and proposed increases in national multiple ownership rules (a proposal that we oppose). The need for affiliates to engage in clearance negotiations and compensation negotiations with the networks creates opportunities for networks to use additional levers to strong-arm affiliates into changing representatives. The CBS and ABC Affiliates are concerned that the cumulative effect of these changes and repeal of the network-rep rule will enable networks to make an affiliate an offer the affiliate cannot practically reject and persuade affiliates to change rep firms in favor of the network. It would be difficult for an affiliate to resist the pressure of the network; only structural protections can safeguard affiliates adequately.

Long-term affiliation arrangements have little effect in leavening the balance of power between networks and their affiliates. These agreements typically permit networks (but not affiliates) to terminate the agreement on a number of grounds, including the transfer of the station. And not all

affiliates have signed long-term affiliation agreements -- and even long-term arrangements will, at some point, lapse. The threat of disaffiliation remains a real one. In addition, the increasing number of stations makes that threat even more credible. And while an affiliate's long-term contract remains in effect, it will be difficult for the affiliate to resist pressure to use a network-owned representative by threatening to cut ties to the network.

CONCLUSION

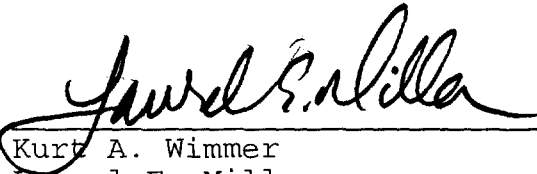
The "network control station of advertising rates" rule and the "network advertising representation" rule continue to preserve a competitive climate for advertising sales, benefit affiliates and strengthen our system of broadcasting. The rules also ensure that affiliates will continue to have access to the objective advice of independent representatives. Repeal of the rules would constitute an additional step down the road of increasing network power, and

would benefit only the networks. The rules should be retained.

Respectfully submitted,

CBS TELEVISION NETWORK AFFILIATES
ASSOCIATION
ABC TELEVISION NETWORK AFFILIATES
ASSOCIATION

By:


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August 28, 1995